



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,496	01/17/2002	William R. Mass	279.397US1	7282

21186 7590 11/03/2005

SCHWEGMAN, LUNDBERG, WOESSNER & KLUTH
1600 TCF TOWER
121 SOUTH EIGHT STREET
MINNEAPOLIS, MN 55402

EXAMINER

JASTRZAB, JEFFREY R

ART UNIT PAPER NUMBER

3762

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

e

Office Action Summary	Application No. 10/052,496	Applicant(s) MASS ET AL.	
	Examiner Jeffrey R. Jastrzab	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-27 is/are allowed.
- 6) ☒ Claim(s) 1-19 and 28-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 8/19/05 with respect to unamended Claim 37 and its dependents have been fully considered but they are not persuasive.

Applicant's arguments filed 8/19/05, with respect to the rejections of Claims 1-6, 8, 10, 12, 14-19, 28-36 under 102(e) and 103 have been fully considered and are persuasive based on the added claim limitations. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Thompson et al., US-6,675,049 and Goedeke, US-6,167,312 and in view of Lee et al. US-6,920,360.

Claim Rejections - 35 USC § 102

Claims 37-39, 42, 44-47 stand rejected under 35 U.S.C. 102(e) as being anticipated by Thompson et al., US 6,675,049.

Applicants argue that the transponder in the Thompson device is not wired to the IMD. While this statement is true, Claim 37 (original) merely calls for receiving a data stream from the IMD via a conductor. This is not the same as wired transmission as it is broad enough to encompass an antenna (which is a conductor) the receives a wireless signal from the IMD as in Thompson et al. As such this rejection is made FINAL.

Claims are rejected under 35 U.S.C. 102(e) as being anticipated by Lee et al.

Claim Rejections - 35 USC § 103

Claims 1-19 and 28-36 are, and Claims 40, 41 and 43 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson et al. in view of Goedeke et al. As to Claims 1 and 28 applicants have added the term "wired" to define over the Thompson wireless data transmission to the external to the IMD telemetry module, however, it is widely accepted in the art that wired and wireless (as well as other transmission modalities as optical, etc.) are known functional equivalents and therefore the subject of design considerations lacking in patentable moment. For example, Goedeke et al. teach that wired and wireless connections are interchangeable in the implantable device telemetry art, col. 7 at lines 27-67. As such it would have been obvious to those having ordinary skill in the art at the time of the invention to have utilized a wired communication path in the Thompson et al. device instead of the disclosed wireless path as a mere substitution of known functionally equivalent data transmission options.

As to Claims 40, 41 and 43, absent specific arguments to address this rejection, the rejection is hereby made FINAL.

Allowable Subject Matter

Claims 20-27 are allowed.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Jastrzab whose telephone number is (571) 2724947. The examiner can normally be reached on Monday - Wednesday 5:30 a.m. to 4:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jeffrey R. Jastrzab
Primary Examiner
Art Unit 3762
10/31/05